AGENDA
February 17,2025

Meetings of Standing Committees
Council Conference Room
5:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
6:00PM

WebEx Telephone Number:1-408-418-9388
Meeting Number (access code): 2347 049 3438
Meeting password: SQsytPMY993

Livestream #1:
https://mishawaka.in.gov/government/elected-appointed-officials/common-council/

Livestream #2
https://www.facebook.com/cityofmishawaka/

Livestream #3:

www.youtube.com/@cityofmishawaka635

Livestream #4:
@MichianaAccessTV on Facebook

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial:23470493438@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of February 03, 2025

5. Petitions, Communications, Remonstrance and Memorial

Letter from the Board of Zoning Appeals regarding their recommendation from their February 11, 2025 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

8. Resolutions

R2025-03	Establishing Revolving Fund for Downtown Forgivable Loan Program
R2025-04	Use Variance to allow tattooing – 1015 W. Edison Rd.
R2025-05	Authorizing Leasing with Option to purchase City Property – 400 block of East 10th Street

9. Ordinances on Second Reading

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

Appointment to Mishawaka Fire Merit Commission

Acceptance of Conflict-of-Interest forms

13. Adjournment –

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages, **https://www.facebook.com/cityofmishawaka/** and **www.youtube.com/@cityofmishawaka635** and on the Michiana Access TV Facebook page, **https://www.facebook.com/MichianaAccessTV**

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Download Packet Link below:

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMCA, CMO, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

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SCAN ME

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

February 3, 2025

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday February 3, 2025, at 6:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Members attending virtually do so by WebEx. Public that attends can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

City Clerk Debbie Ladyga-Block called the roll.

Present: Mrs. Hazen (P), Mrs. Voelker (P), Mr. Carroll (P), Mr. Banicki (P), Mr. Emmons (P), Ms. Hahn (P), Mr. Mammolenti (P), Mr. Violi (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Also Present: Mike Trippel, Council Attorney

Minutes for the Regular Meeting on January 27, 2025 were approved as received from the Clerk's Office.

Clerk Block read the following appeal by title.

Appeal No. 2025-01	Use Variance to allow E-Commerce Store with no Retail Sales in R-1 single Family Residential – 611 S. Main St.

Clerk Block read the following resolution by title and opened the public hearing.

<u>RESOLUTION R2025-02</u>

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 611 S. MAIN STREET MISHAWAKA, INDIANA
Use Variance to allow E-Commerce Store with no Retail Sales in R-1 Single Family Residential – 611 S. Main St.

Christine Urus, Representative for Advanced RE Holdings LLC, spoke in favor of **RESOLUTION R2025-02**. Mrs. Urus stated currently, the real estate was classified as a C-1, was recently purchased, and due to the prior vacancy, they were required to reclassify it as R-1 residential and they to a couple use variances to operate the e-commerce store.

Mr. Emmons stated the building was in his district and he drove by it all the time and asked if they were going to rectify some of the issues on the outside such as the eavestroughs that were down, the siding was off on the front side, and in the back side the roofing was all rotted out. Mr. Emmons asked if they were going to repair that. Mrs. Urus stated yes, they would be repairing all three of the items he mentioned. Mr. Emmons stated hopefully they were going to do some modifications to it and make it nicer for the neighborhood. Mr. Emmons wished her well in refurbishing the building and putting it up to standard.

Ms. Hahn stated like Mr. Emmons, she too drove by the building many times and had been looking into it and asked if they planned on putting any windows in the building and if she had talked to the Mishawaka Fire Department as far as there being some regulations on windows and what needed to be done on their end. Mrs. Urus stated yes to both questions.

Mr. Hixenbaugh thanked Mrs. Urus for her interest in bringing the building in question back to life so to speak. Mr. Hixenbaugh stated both the resolution in front of them with regard to the use variance and then the ordinance dealing with the rezoning that they would talk later in the meeting, had some conditions embedded in them with one having to do with the fact that since this was going to be used, albeit in a residential district, for a commercial purpose, that they would not have the benefit of certain city offerings that were available to single family homeowners. Mr. Hixenbaugh stated the second condition said that the property would be subject to fire inspections and the third condition said that the business would have no more than two on-site employees and asked if she could commit that evening to agreeing to all three of the aforementioned conditions. Mrs. Urus stated yes. Mr. Hixenbaugh stated they were going to be considering the companion rezoning ordinance later on and any action they took the approve the resolution must be mirrored by the action to approve the ordinance as well so it would be a two-step process, but he had not read or heard anything that led him to believe that he would have a problem voting in favor of either of the two documents and he appreciated the willingness they had shown to make an investment in the building.

Question was called for at 6:07PM for **RESOLUTION R2025-02 Motion passed by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The resolution passed 9-0.

Clerk Block read the following proposed ordinance by title and opened the public hearing.

PROPOSED ORDINANCE NO. 2025-02

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE" OF 1966 OF THE CITY OF MISHAWAKA, INDIANA
Rezone from C-1 Commercial to R-1 Single Family – 611 S. Main St.

Mr. Carroll reported the Land Use Planning Committee recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Christine Urus, Representative for Advanced RE Holdings LLC, spoke in favor of **PROPOSED ORDINANCE NO. 2025-02**. The record reflected that all of her comments made prior still stood.

Mrs. Voelker asked if she could give the Council an overall plan of what they were going to do with the building. Mrs. Urus stated they were going to get new a new roof, new siding, windows, and gutters. Mrs. Voelker asked about landscaping. Mrs. Urus stated there was not really any landscaping to be done, but there was brush clean up and stuff along the backside and the side of the building that needed to be addressed.

Victor Beak, 611 S. Main Street, spoke in favor of **PROPOSED ORDINANCE NO. 2025-02**. Mr. Beak stated he would like to put some grass out front and tear up the concrete, but there were a lot of restrictions as far as getting contractors to do that and he could not do it himself, so that was going to be on hold for now but down the road he would like to put in new sidewalks, curbs, and then also some landscaping out front to make it look nicer. Mrs. Voelker stated she did some research into their business a couple of weeks ago and found out they were moving their business from another location and asked if they were in South Bend. Mr. Beak stated yes. Mrs. Voelker asked why they wanted to move to Mishawaka. Mr. Beak stated currently they were working out of his home, so they were moving into a building now and he had some employees and needed a little more space. Mrs. Voelker thanked him for choosing Mishawaka.

Mr. Emmons asked if he was going to make all of those repairs all at one time or if they would be spaced out over a period of time. Mr. Beak stated he had hired a contractor to do the new roof and gutters, the siding in the front of the building was all going to be done, and possibly a window or two in the front right away and he would be power washing the siding on the sides at a later date. Mr. Emmons stated he appreciated it.

Mr. Hixenbaugh thanked them both for the work they were doing with the building and he believed this was going to be good for the neighborhood and he hoped that they would agree that they were still going to be in close proximity to some residential homes and the way their business was described in the documentation in front of them, it did not appear to him that it would be a problem for anybody and there was really not going to be a lot of traffic with it going to be all e-commerce, so there was not much better of a setup for them, to be a good neighbor. Mr. Hixenbaugh stated he hoped that it worked out for them that the neighborhood and community embraced their business, but he asked that as time went on and as things changed with regard to his business to keep in mind that they could still be in that neighborhood and being a good neighbor was an expectation for businesses, just like it was for the folks that lived next door to him that he was sure he wanted to have be good neighbors to him. Mr. Hixenbaugh wished them luck on the venture.

Question was called for at 6:13PM for **PROPOSED ORDINANCE NO. 2025-02 Motion passed by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The ordinance passed 9-0, this it became **ORDINANCE NO. 5925**.

NEW BUSINESS

Mr. Carroll made a reminder that the Second District Neighborhood Meeting would take place on Thursday February 13th at 7PM at the Blair Hills Community Clubhouse.

ADJOURNMENT 6:14PM

Deborah S. Block /s/	Gregg A. Hixenbaugh /s/
Deborah S. Block, IAMC, MMC, City Clerk	Gregg A. Hixenbaugh, President

These minutes are a summary of actions taken at the Mishawaka Common Council meeting. The full video archive of the meeting is available for viewing at www.youtube.com/@cityofmishawaka635 for as long as this media is supported.

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

Deborah S. Block, IAMC, MMC
FEB 13 2025
City Clerk
Mishawaka, IN

February 12, 2025

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
February 11, 2025, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variances was considered:

APPEAL #25-01 An appeal submitted by MJ Investments LLC requesting a Use Variance for 1015 W Edison, Mishawaka, IN, to allow for a tattoo studio.

The Board, with a vote of 4-0, provided a favorable recommendation.

Respectfully,

Donna M Burkart

Donna M Burkart, Administrative Planner
Secretary, Board of Zoning Appeals

Deborah S. Block, IAMC, MMC

FEB 06 2025

City Clerk
Mishawaka, IN

RESOLUTION NO. 2025-03

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A REVOLVING FUND PURSUANT TO INDIANA CODE 5-1-14-14, AUTHORIZING A DOWNTOWN FORGIVABLE LOAN PROGRAM UNDER SUCH REVOLVING FUND, AND CERTAIN RELATED MATTERS

WHEREAS, it is the desire of the City to increase both the desirability and vitality of the downtown, and select geographic areas, while also increasing the livability of the City as a whole; and

WHEREAS, the City has incentivized the redevelopment of the former Uniroyal properties/Ironworks redevelopment area. This has had success in creating a mixed-use destination that is now considered a region-wide asset. The redevelopment and creation of the Ironworks on the former Uniroyal properties, bringing City Hall downtown, adding over 700 residential units, providing more restaurants and commercial space, all were completed in a manner where it was believed there would be associated activity and interest that would also benefit both the historic downtown, 100 Center, and surrounding areas; and

WHEREAS, despite the redevelopment efforts, older portions of the Historic Downtown, 100 Center, West End, and surrounding areas have not seen the proportionate redevelopment that was desired which was envisioned to be commensurate with the new buildings that have been constructed on the former Uniroyal properties and surrounding area; and

WHEREAS, to address this disproportionate redevelopment, the City now desires to create a grant/forgivable loan program for selected geographic areas of the City; and

WHEREAS, the geographic areas are generally described as the historic downtown, City Center C-3 zoned property, and the West End business area; and

WHEREAS, staff prepared an outline of a grant/forgivable loan program, provided notice to downtown property owners, and provided notice to the Mishawaka Business Association (MBA) as part of the December 17th, 2024 Redevelopment Commission Meeting. Feedback was obtained from multiple property owners, businesses, elected officials, and Redevelopment Commission members; and

WHEREAS, the input was overwhelmingly favorable, including requests to expand the areas into the West End which was not originally outlined; and

WHEREAS, the program as envisioned provides matching funds up to $50,000 per project, with a minimum loan matching loan amount of $5,000 for hardscape construction projects. No minimum project amount would be required for murals, façade lighting, decorative exterior lighting, and storefront window enhancements; and

WHEREAS, the general goals of a forgivable loan/grant program is to reduce commercial blight/disrepair, create distinctive character/sense of place improvements, honor, promote, and preserve existing outstanding and notable historic structures, increase commercial activity, increase the number and diversity of residential housing units, promote unique, local stores and services, and promote restaurants, eateries, coffee shops, event spaces, and other venues and businesses that provide "something to do"; and

WHEREAS, in order to facilitate the implementation of a grant/forgivable loan program to achieve the noted goals, the Common Council of the City of Mishawaka, Indiana (the "Common Council"), the fiscal body and legislative body of the City of Mishawaka, Indiana (the "City"), desires to establish (i) a revolving fund, to be known as the "CEDIT Revolving Fund" (the "Revolving Fund"), pursuant to Indiana Code 5-1-14-14(b), as amended (the "Act"), to be funded from a portion of the City's distributive share of the local income tax revenues (the "Economic Development Revenues") allocated for economic development purposes under Indiana Code 6-3.6-6-9, as amended, and received by the City and any other moneys legally available to the City for such purpose (collectively, the "Available Revenues") and (ii) a Downtown Grant/Forgivable Loan Program (the "Program") to provide loans from the Revolving Fund to businesses located in the City as more fully described herein;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Mishawaka, Indiana, that:

Section 1. The Common Council hereby establishes the Revolving Fund pursuant to Indiana Code 5-1-14-14(b), which Revolving Fund shall be funded from Available Revenues in amounts to be approved by the Common Council from time to time in accordance with law to satisfy the loan requirements from such Revolving Fund. Notwithstanding anything herein to the contrary, moneys which constitute Economic Development Revenues may not be loaned from the Revolving Fund unless the use of such Economic Development Revenues has been included in the Capital Improvement Plan of the City (the "CIP") pursuant to Indiana Code 6-3.6-6-9.5 and are otherwise legally available and appropriated for such purposes. The administration of these proceeds and loan program shall be performed by the Administration and overseen by the City of Mishawaka Redevelopment Commission per the parameters identified herein. The general outline and terms of the program, including the areas eligible for funding, have been identified in Attachment "A", which has been attached to this resolution.

Section 2. In order to assist businesses in the City with the general goals of the City identified herein, the Common Council approves of the creation of the Program which will provide an aggregate amount of loans to qualifying property owners totaling $500,000 with each qualifying business receiving a loan of up to a maximum of $50,000 from the Revolving Fund. Such loans will have an interest rate of 0% with the total amount of the loan to be forgiven if the improvements are completed as outlined herein and approved by the City Redevelopment Commission. Funding for the loan shall be provided only at the completion of the improvements. If an event of default occurs under a loan where the improvement is not completed per the approved application, funds for loan shall not be distributed.

Section 3. The Common Council hereby approves of action to be taken by Mayor of the City (the "Mayor") to amend the CIP Plan to include use of Economic Development Revenues for loans under the Program.

Section 4. The Common Council finds that loans made pursuant to the Program will further the following economic development purposes set forth in the Act: (i) promoting significant opportunities for the gainful employment of the City's residents; and (ii) retaining or expanding significant business enterprises in the City.

Section 5. Loans made under the Program shall be evidenced by a Loan Agreement between the City and each borrower as may be approved by the City of Mishawaka Redevelopment Commission. The Administration, by and through the City of Mishawaka Redevelopment Commission, is hereby authorized to approve of the forms of the Loan Documents consistent with terms provided herein.

Section 6. The Administration and Redevelopment Commission are, and each of them is, hereby authorized and directed to take all such actions with respect to the Program as the same shall deem proper and necessary upon the advice of counsel.

Section 7. This Resolution shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this _______ day of ___________, 2025, at _____ o'clock, P.M.

____
Gregg Hixenbaugh, President

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

Exhibit A- City of Mishawaka
Downtown Grant/Forgivable Loan Program Outline

Areas Eligible for the program:

C-3 Zoned Properties:

All C-3- City Center zoned properties, as may be modified or expanded over time.

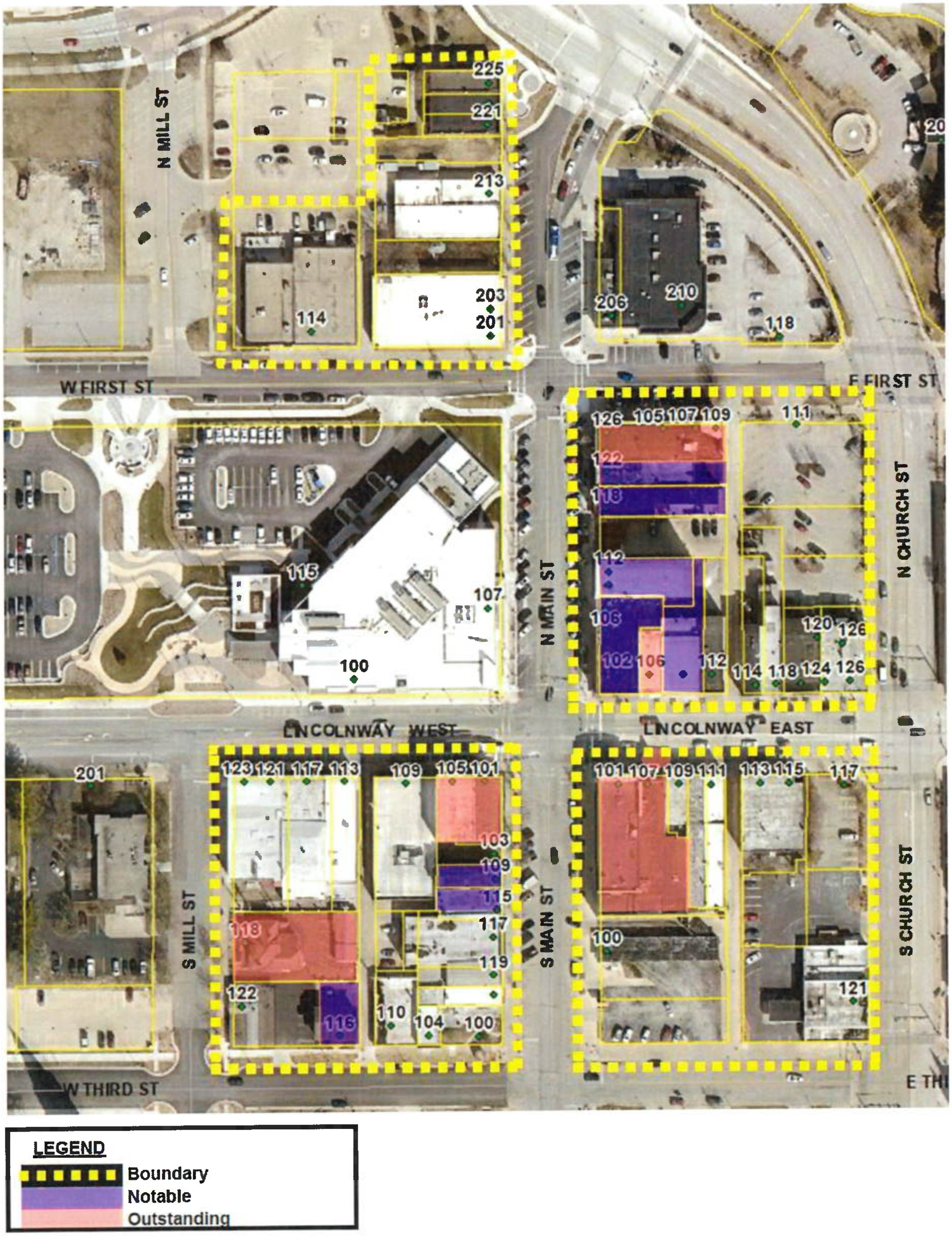
Downtown City Center– C-3 Zoning District

Properties with current C-3 City Center Zoning

Historic Core Properties:

Historic Core block areas as identified on the map below. Properties identified within the Historic Core area that are rated as Notable or Outstanding on the Mishawaka Historic Sites and Structures inventory are noted on the map where eligibility and program requirements/benefits may be different.

Core Historic Downtown Grant Area



West End Commercial Properties:

West End commercial areas as identified on the map below.

West End Grant Area

Additional restrictions/properties within designated areas that are excluded from Grant/Forgivable Loan funding:

The City desires to direct funding to the highest priorities. In this regard properties within designated areas are limited by the following restrictions which may make them ineligible for funding:

- Properties that have received City assistance with building or infrastructure improvements with TIF funds in the last 15 years are excluded from receiving funding.
- Properties that have received City assistance with Tax Abatement in the last 15 years are excluded from receiving funding.
- Only commercial buildings, or, a commercial buildings with first floor commercial uses with upper-level residential uses are eligible.
- Soley residential properties and uses not identified as a permitted use within the C-3 City Center Commercial District are excluded from receiving funding.

- Properties owned by government entities, quasi government entities receiving tax dollars, not for profit entities, and religious institutions are excluded from receiving funding except as follows: Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.
- Grants may not be used to facilitate or improve warehouse/storage land uses, seasonal tax preparation uses, franchised dollar stores, smoke/vape stores, CBD/cannabis/head shops, hookah lounges, bars not in compliance with the riverfront liquor license requirements, HVAC and electrical supply shops, wholesalers with no walk in sales, auto parts stores, auto sales, automobile related uses, stores that sell tobacco products (excluding cigar shops), check cashing/payday loan businesses, liquor stores (excluding specialty wine, craft beer, and craft made liquors), furniture and appliance rental stores, uses with blocked out windows, drive thru uses- including but not limited to banks, food, and convenience stores. Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.
- Grants are limited by property/parcel, not by address. This is because multiple addresses can be assigned to one building. Properties that have received a forgivable loan/grant, may not receive another loan for a period of one calendar year from the completion/distribution date of their previous loan. Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.

Project Types Excluded from Grant/Forgivable Loan Funding:

To best direct funds to achieve the desired goals, the City is looking for significant investments, either higher dollar construction, or significant aesthetic improvements. The City does not want a dependency on grants for routine items. There is a need for elements like tuck pointing masonry, the issue is that it provides a potential incentive to wait/rely on City funding and does not by itself achieve the goals desired by the City. Elements like signage may not have the same impact or will change constantly with new tenants. As such, the following types of projects/elements are ineligible for funding:

- Signage (except as part of a significant renovation/complete façade change)
- deferred maintenance items
- Painting (except as part of a significant renovation/complete façade change)
- HVAC or water heater replacement (except as part of a significant renovation)
- No existing plumbing replacement (except as part of significant renovation, for fire suppression and./or for lead pipe removal)
- No wiring or electrical replacement (except as part of a significant renovation)
- No roofing
- Repair of canopies
- Repair of rotting wood, tuck pointing masonry, and other maintenance-oriented items (except as part of a complete facade renovation)

Logistics and further Restrictions:

The City expenditure of funds must comply with state law. To comply, the grant needs to be in the form of a forgivable loan and be approved through an application process that is under the jurisdiction of the Redevelopment Commission. Since the term of the loan is at the discretion of the City, and the goal for it to perform as a grant program, the term of the loan would both be short and vary based on the completion time of the project. The process envisioned is outlined below with the intent of limiting the amount of administration required and protecting the use of public funding.

The process is to work generally as follows:

- Each loan would be initiated by an application that is reviewed for complete information and eligibility by staff. If applications are submitted that are incomplete or ineligible, they would not be presented to the Redevelopment Commission. If there is a disagreement with staff, the Redevelopment Commission is the deciding entity.
- Once an application is complete, it will be presented to the Redevelopment Commission at the next regularly scheduled meeting.
- The role of the Redevelopment Commission is to review applications for compliance with the program as outlined. Staff will prepare a brief review and recommendation for each project. The intent is only to provide a limited amount of discretion to the Redevelopment Commission. The process is meant to be more of an administrative check for program compliance. For example, a new Mexican Restaurant wants to open. The Commission has no role in determining elements like "do we have enough Mexican food establishments?", there is no role in determining the number of seats, the inside décor, whether they are open for lunch during the week, etc.... The review would only pertain to the work where funding is being requested. In this case, let's assume the only funding requested for a grease interceptor, the only role of the Commission is to determine if it is an eligible expense, and the required documentation is in place. The Commission review does not bind, commit or imply any other kind of review or approval that may be required by the City or other jurisdictions. For example, the restaurant finds out later in the process that they need an additional fire escape. That is not an element that requires the review of the Redevelopment Commission. The burden is on the applicants to determine project needs and costs before applying for a grant.
- Outstanding/Notable Building Exterior building improvements that require physical modification of the structure shall require the review and approval of the Mishawaka Historic preservation Commission (HPC). Replacing an awning, windows, enlarging a storefront would require HPC approval. Façade painting, a mural, most decorative lighting, outside seating, interior remodels, would not. <u>HPC approval needs to occur before Redevelopment Commission approval</u>. Since these structures are not locally designated with adoptive standards a Certificate of Appropriateness (CoA) is not required. The required review and approval of the HPC is only generic for assurance that the proposed improvement is both period and architecturally appropriate.
- Once approved by the Redevelopment Commission, the loan is initiated and guaranteed for an established period of time. Written documentation of the approval is provided to the applicant so that it can be used for proof of a funding commitment if loans are required.
- <u>No City funding would be provided until the end of the project</u>. Upon completion, the funding is provided and the loan is then forgiven at the next regularly scheduled Redevelopment Commission meeting. This removes the need for credit applications, draws, or monitoring by staff. By being forgiven, there is no repayment or collections

issue associated with the loans. We just need a simple review to determine if the project has been completed, or not. This also prevents us from jeopardizing City funding if a project remains half completed.

- If an applicant receives a forgivable loan and they fail to execute, let's say they only perform half of the renovations. A grace period will be provided to complete that is determined by the Redevelopment Commission at the time of approval. If the applicant fails to meet the time frame, they would be provided written notice of loan termination from the Redevelopment Commission with a stated expiration date. If after this stated time the project remains incomplete, the loan is terminated, and **no city funding will be provided**. This includes projects where significant portions of the intended work is complete (no partial payments). This then allows the City to remove the funding/project from our books and allow the funds to be loaned to another project.
- Loans are limited only to the property owners. Loans shall not be made to tenants or to individual contractors. For example, if a contractor starts a project but fails to complete it, the City does not want to be party to the contract between the owner and the entity performing the work. The responsibility rests with the owner. The City also does not want to be involved with or get between the owner and tenants in the building. If a tenant is responsible for completing work, and has a dispute with the owner, the owner is the only person/entity responsible relative to the forgivable loan/grant.

Other Limitations:

In determining the requirements of a forgivable loan program, and in reviewing other programs that are in surrounding communities, additional parameters such as the minimum size of projects have been included to better direct the use of funds. Having a minimum threshold of value is important to maximize impact and limit the potential number of loans/administration time required to process. No fee is required to apply.

- Minimum forgivable loan/grant amount- $5,000, with a maximum grant amount of $50,000. The minimum can be waived at the discretion of the Redevelopment Commission for permanent outside seating and streetscape landscaping, new permanent façade lighting, decorative façade lighting, murals and publicly displayed art, and storefront window enhancements.
- If work is hired out to contractor, the applicant shall provide multiple quotes as part of the application process, and is required to contract with the lowest qualified bidder.
- If work is being performed by the owner, only material costs are eligible for reimbursement. Costs are reimbursed upon successful installation/occupancy, not upon receipt of the ordered materials.
- Grant funding shall only be provided for new projects (as determined by Redevelopment Commission). This program is not meant for projects that have received building/improvement location permits and have started work prior to the approval of a grant application.
- All restaurant, café, bar, entertainment venues related improvements must be accompanied by a signed application committing to the "Municipal Riverfront Development Project Area Liquor License Eligibility Requirements and Evaluation Criteria", regardless of being located in the district.

Eligible Projects and draft loan/grant match percentages:

After each project category of grant eligibility listed below, there is a description followed by each area that is eligible for funding. There are four types of properties based on location and historic rating. After each property type, a percentage is listed. This percentage is the maximum percentage that would be potentially be covered of the overall project cost. For example, if the proposed project has a $50,000 total cost and the percentage listed is 50%, the project would be eligible for $25,000 through the forgivable loan/grant program. If the same project had an overall $150,000 cost and it was eligible for 50%, the maximum the project would be eligible for is $50,000, which is the maximum dollar amount permitted through the program.

A high value is being placed on aesthetics. Also, as illustrated by the examples above, this program is oriented for projects that are under a few hundred thousand dollars. Projects that are above that may be eligible for other assistance and we would encourage anyone interested in making larger investments to talk to staff directly about other incentives such as tax abatement and the use of TIF funds.

Although specific projects have different percentages that are eligible for grant funding, multiple project types are expected to be submitted in one application for funding. For example, a new restaurant may request grant funds for a grease interceptor, interior remodel, and aesthetic lighting as part of a renovation project. This would be one application, not three. It is important for property owners to figure out all eligible projects at one time since there is a required timeframe that would limit/prevent eligibility for a second grant immediately.

Eligible Projects and draft loan/grant match percentages:

Use changes:

Many of the upper floors within the historic downtown core of multistory buildings that have remained vacant and unused for years. This could be for multiple reasons. Loan funds could be used for all necessary improvements needed to make the space occupiable where it is currently not possible based on building or fire codes. Funds shall only be provided on projects where occupancy is approved/permitted at the conclusion of the project.

- C-3- Not Eligible, Historic Core- 25%, Historic Core Outstanding/Notable- 50%, West End- 25%

Fire Suppression and Fire/Building Code Life Safety Improvements-

There are many commercial buildings in our downtown that may be grandfathered, or require improvements to allow occupancy based on a desired change of use. This includes installation of fire suppression equipment or ingress/egress improvements needed to obtain occupancy on upper floors..

- C-3- 20%, Historic Core- 30%, Historic Core Outstanding/Notable- 50%, West End- 30%

Exterior façade improvements

This is for significant face lift exterior improvements. Complete repainting of a building, new awnings, new or expanded store windows, complete façade window and door replacements, and the like.

- C-3- 20%, Historic Core- 30%, Historic Core Outstanding/Notable- 50%, West End- 30%

Window replacement and/or restoration for upper floors-

Window replacement or restoration can be a significant expense potentially with little return where structures have older second and third floors that cannot be used for whatever reason. In multiple locations, we have buildings with boarded up windows. Although this could fall under Exterior façade improvements, we created a separate category to provide more incentives where the need is greater. These percentages apply only to upper story windows that are boarded/deteriorated.

- C-3- Not eligible, Historic Core- 40%, Historic Core Outstanding/Notable- 60%, West End- 40%

Grease Interceptor for new restaurants-

Grease interceptors can be a significant barrier to constructing a new restaurant. Restaurants, eating, and drinking establishments are highly valuable in the downtown core.

- C-3- 50%, Historic Core- 50%, Historic Core Outstanding/Notable- 50%, West End- Not eligible

Grease Interceptor upgrades for existing restaurants-

Grease interceptors can be a significant barrier to renovating or re-investing in existing spaces. There is a benefit to the City Fats, Oils, and Grease program to have this reinvestment. Restaurants, eating, and drinking establishments are highly valuable in the downtown core.

- C-3- 50%, Historic Core- 75%, Historic Core Outstanding/Notable- 75%, West End- 50%

Interior remodels for restaurants as part of changing out tenants-

Restaurants are difficult to operate and run. Reducing the risk through forgivable loans creates more opportunities for new restaurants to locate downtown. Every time a restaurant turns over there is expense required for furnishings, equipment and décor. This will aid in covering these costs. The City currently has a number of vacant spaces right now, and at least one more coming. Funding shall only be provided concurrent with occupancy and will not be provided for speculative improvements.

C-3- 25%, Historic Core- 40%, Historic Core Outstanding/Notable- 50%, West End- Not eligible

Permanent outside seating and streetscape landscaping -

Owner-initiated improvements for outside seating and landscaping.

- C-3- 50%, Historic Core- 50%, Historic Core Outstanding/Notable- 50%, West End- 50%
- 100% of material costs may be covered at the discretion of the Redevelopment Commission where the property owner is self-performing or providing all labor and the materials are less than $2,000.

New Permanent Façade Lighting (basic)

When you drive through downtown, there are numerous commercial buildings that are dark, and do not even have minimal lighting at the door. Some of this is by choice and has little to do with any physical improvement. This type of lighting is needed and necessary for a vibrant downtown. These projects are intended to cover basic white lighting for visibility and to wash light on the facades of buildings. Part of the providing the funding will be a requirement to keep the lights on from dusk to 2am at a minimum. Because these are likely lower cost projects that have a higher impact, there would be no minimum project amount to be eligible for funding.

- C-3- 30%, Historic Core- 75%, Historic Core Outstanding/Notable- 75%, West End- 75%
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New Decorative Façade Lighting

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Murals and art projects create both a sense of place and greatly contribute to a vibrant downtown. Since art is discretionary, this is an area where the Redevelopment Commission would play a discretionary role in approving or denying funding. Unlike other project funding areas, the city would be taking on an active partner role. The applicant would need to work with staff to develop a viable proposal before presenting it to the Redevelopment Commission for approval. A good example of this is the shoe artwork located on the Mill Phase 2 Parking Garage facing front street, currently under construction, and the car on the side of the 101 building.

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Storefront Window Enhancements

As indicated, when you drive through downtown, there are numerous commercial buildings that are dark. Some property owners, like Mishawaka Antiques have made an effort to decorate and provide a lit storefront window. Even though they are not open at night, it provides interest and greatly contributes to a vibrant downtown image. Unlike other project funding areas, the City would be taking on an active partner role. The applicant would need to work with staff to come up with a viable proposal before presenting it to the Redevelopment Commission for approval. These projects are intended to cover the materials and work needed to transform street level windows for publicly lit displays. Part of the providing the funding will be a requirement to keep the lights on from dusk to 2am at a minimum.

- C-3- 50%, Historic Core- 75%, Historic Core Outstanding/Notable- 75%, West End- 75%
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RESOLUTION NO. 2025-03

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A REVOLVING FUND PURSUANT TO INDIANA CODE 5-1-14-14, AUTHORIZING A DOWNTOWN FORGIVABLE LOAN PROGRAM UNDER SUCH REVOLVING FUND, AND CERTAIN RELATED MATTERS

WHEREAS, it is the desire of the City to increase both the desirability and vitality of the downtown, and select geographic areas, while also increasing the livability of the City as a whole; and

WHEREAS, the City has incentivized the redevelopment of the former Uniroyal properties/Ironworks redevelopment area. This has had success in creating a mixed-use destination that is now considered a region-wide asset. The redevelopment and creation of the Ironworks on the former Uniroyal properties, bringing City Hall downtown, adding over 700 residential units, providing more restaurants and commercial space, all were completed in a manner where it was believed there would be associated activity and interest that would also benefit both the historic downtown, 100 Center, and surrounding areas; and

WHEREAS, despite the redevelopment efforts, older portions of the Historic Downtown, 100 Center, West End, and surrounding areas have not seen the proportionate redevelopment that was desired which was envisioned to be commensurate with the new buildings that have been constructed on the former Uniroyal properties and surrounding area; and

WHEREAS, to address this disproportionate redevelopment, the City now desires to create a grant/forgivable loan program for selected geographic areas of the City; and

WHEREAS, the geographic areas are generally described as the historic downtown, City Center C-3 zoned property, and the West End business area; and

WHEREAS, staff prepared an outline of a grant/forgivable loan program, provided notice to downtown property owners, and provided notice to the Mishawaka Business Association (MBA) as part of the December 17th, 2024 Redevelopment Commission Meeting. Feedback was obtained from multiple property owners, businesses, elected officials, and Redevelopment Commission members; and

WHEREAS, the input was overwhelmingly favorable, including requests to expand the areas into the West End which was not originally outlined; and

WHEREAS, the program as envisioned provides matching funds up to $50,000 per project, with a minimum loan matching loan amount of $5,000 for hardscape construction projects. No minimum project amount would be required for murals, façade lighting, decorative exterior lighting, and storefront window enhancements; and

WHEREAS, the general goals of a forgivable loan/grant program is to reduce commercial blight/disrepair, create distinctive character/sense of place improvements, honor, promote, and preserve existing outstanding and notable historic structures, increase commercial activity, increase the number and diversity of residential housing units, promote unique, local stores and services, and promote restaurants, eateries, coffee shops, event spaces, and other venues and businesses that provide "something to do"; and

WHEREAS, in order to facilitate the implementation of a grant/forgivable loan program to achieve the noted goals, the Common Council of the City of Mishawaka, Indiana (the "Common Council"), the fiscal body and legislative body of the City of Mishawaka, Indiana (the "City"), desires to establish (i) a revolving fund, to be known as the "CEDIT Revolving Fund" (the "Revolving Fund"), pursuant to Indiana Code 5-1-14-14(b), as amended (the "Act"), to be funded from a portion of the City's distributive share of the local income tax revenues (the "Economic Development Revenues") allocated for economic development purposes under Indiana Code 6-3.6-6-9, as amended, and received by the City and any other moneys legally available to the City for such purpose (collectively, the "Available Revenues") and (ii) a Downtown Grant/Forgivable Loan Program (the "Program") to provide loans from the Revolving Fund to businesses located in the City as more fully described herein;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Mishawaka, Indiana, that:

Section 1. The Common Council hereby establishes the Revolving Fund pursuant to Indiana Code 5-1-14-14(b), which Revolving Fund shall be funded from Available Revenues in amounts to be approved by the Common Council from time to time in accordance with law to satisfy the loan requirements from such Revolving Fund. Notwithstanding anything herein to the contrary, moneys which constitute Economic Development Revenues may not be loaned from the Revolving Fund unless the use of such Economic Development Revenues has been included in the Capital Improvement Plan of the City (the "CIP") pursuant to Indiana Code 6-3.6-6-9.5 and are otherwise legally available and appropriated for such purposes. The administration of these proceeds and loan program shall be performed by the Administration and overseen by the City of Mishawaka Redevelopment Commission per the parameters identified herein. The general outline and terms of the program, including the areas eligible for funding, have been identified in Attachment "A", which has been attached to this resolution.

Section 2. In order to assist businesses in the City with the general goals of the City identified herein, the Common Council approves of the creation of the Program which will provide an aggregate amount of loans to qualifying property owners totaling $500,000 with each qualifying business receiving a loan of up to a maximum of $50,000 from the Revolving Fund. Such loans will have an interest rate of 0% with the total amount of the loan to be forgiven if the improvements are completed as outlined herein and approved by the City Redevelopment Commission. Funding for the loan shall be provided only at the completion of the improvements. If an event of default occurs under a loan where the improvement is not completed per the approved application, funds for loan shall not be distributed.

Section 3. The Common Council hereby approves of action to be taken by Mayor of the City (the "Mayor") to amend the CIP Plan to include use of Economic Development Revenues for loans under the Program.

Section 4. The Common Council finds that loans made pursuant to the Program will further the following economic development purposes set forth in the Act: (i) promoting significant opportunities for the gainful employment of the City's residents; and (ii) retaining or expanding significant business enterprises in the City.

Section 5. Loans made under the Program shall be evidenced by a Loan Agreement between the City and each borrower as may be approved by the City of Mishawaka Redevelopment Commission. The Administration, by and through the City of Mishawaka Redevelopment Commission, is hereby authorized to approve of the forms of the Loan Documents consistent with terms provided herein.

Section 6. The Administration and Redevelopment Commission are, and each of them is, hereby authorized and directed to take all such actions with respect to the Program as the same shall deem proper and necessary upon the advice of counsel.

Section 7. This Resolution shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this _______ day of ___________, 2025, at _____ o'clock, P.M.

____
Gregg Hixenbaugh, President

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

Exhibit A- City of Mishawaka
Downtown Grant/Forgivable Loan Program Outline

Areas Eligible for the program:

C-3 Zoned Properties:

All C-3- City Center zoned properties, as may be modified or expanded over time.

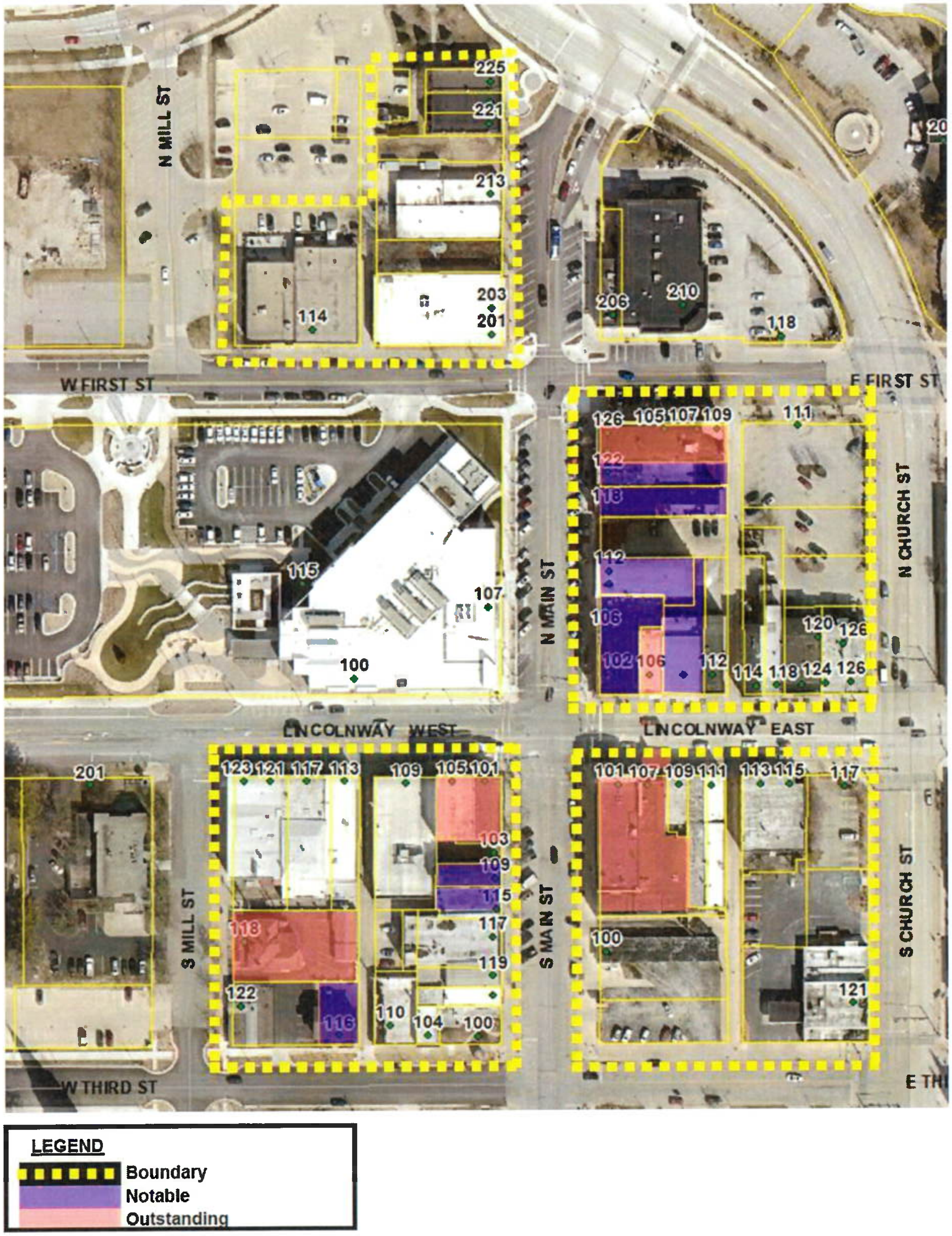
Downtown City Center– C-3 Zoning District

Properties with current C-3 City Center Zoning

Historic Core Properties:

Historic Core block areas as identified on the map below. Properties identified within the Historic Core area that are rated as Notable or Outstanding on the Mishawaka Historic Sites and Structures inventory are noted on the map where eligibility and program requirements/benefits may be different.

Core Historic Downtown Grant Area



West End Commercial Properties:

West End commercial areas as identified on the map below.

West End Grant Area

Additional restrictions/properties within designated areas that are excluded from Grant/Forgivable Loan funding:

The City desires to direct funding to the highest priorities. In this regard properties within designated areas are limited by the following restrictions which may make them ineligible for funding:

- Properties that have received City assistance with building or infrastructure improvements with TIF funds in the last 15 years are excluded from receiving funding.
- Properties that have received City assistance with Tax Abatement in the last 15 years are excluded from receiving funding.
- Only commercial buildings, or, a commercial buildings with first floor commercial uses with upper-level residential uses are eligible.
- Soley residential properties and uses not identified as a permitted use within the C-3 City Center Commercial District are excluded from receiving funding.

- Properties owned by government entities, quasi government entities receiving tax dollars, not for profit entities, and religious institutions are excluded from receiving funding except as follows: Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.
- Grants may not be used to facilitate or improve warehouse/storage land uses, seasonal tax preparation uses, franchised dollar stores, smoke/vape stores, CBD/cannabis/head shops, hookah lounges, bars not in compliance with the riverfront liquor license requirements, HVAC and electrical supply shops, wholesalers with no walk in sales, auto parts stores, auto sales, automobile related uses, stores that sell tobacco products (excluding cigar shops), check cashing/payday loan businesses, liquor stores (excluding specialty wine, craft beer, and craft made liquors), furniture and appliance rental stores, uses with blocked out windows, drive thru uses- including but not limited to banks, food, and convenience stores. Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.
- Grants are limited by property/parcel, not by address. This is because multiple addresses can be assigned to one building. Properties that have received a forgivable loan/grant, may not receive another loan for a period of one calendar year from the completion/distribution date of their previous loan. Loans for material only that are less than $2,000 shall be permitted when the improvements are requested by the City as part of the implementation of a larger streetscape initiative.

<u>Project Types Excluded from Grant/Forgivable Loan Funding:</u>

To best direct funds to achieve the desired goals, the City is looking for significant investments, either higher dollar construction, or significant aesthetic improvements. The City does not want a dependency on grants for routine items. There is a need for elements like tuck pointing masonry, the issue is that it provides a potential incentive to wait/rely on City funding and does not by itself achieve the goals desired by the City. Elements like signage may not have the same impact or will change constantly with new tenants. As such, the following types of projects/elements are ineligible for funding:

- Signage (except as part of a significant renovation/complete façade change)
- deferred maintenance items
- Painting (except as part of a significant renovation/complete façade change)
- HVAC or water heater replacement (except as part of a significant renovation)
- No existing plumbing replacement (except as part of significant renovation, for fire suppression and./or for lead pipe removal)
- No wiring or electrical replacement (except as part of a significant renovation)
- No roofing
- Repair of canopies
- Repair of rotting wood, tuck pointing masonry, and other maintenance-oriented items (except as part of a complete facade renovation)

<u>Logistics and further Restrictions:</u>

The City expenditure of funds must comply with state law. To comply, the grant needs to be in the form of a forgivable loan and be approved through an application process that is under the jurisdiction of the Redevelopment Commission. Since the term of the loan is at the discretion of the City, and the goal for it to perform as a grant program, the term of the loan would both be short and vary based on the completion time of the project. The process envisioned is outlined below with the intent of limiting the amount of administration required and protecting the use of public funding.

The process is to work generally as follows:

- Each loan would be initiated by an application that is reviewed for complete information and eligibility by staff. If applications are submitted that are incomplete or ineligible, they would not be presented to the Redevelopment Commission. If there is a disagreement with staff, the Redevelopment Commission is the deciding entity.
- Once an application is complete, it will be presented to the Redevelopment Commission at the next regularly scheduled meeting.
- The role of the Redevelopment Commission is to review applications for compliance with the program as outlined. Staff will prepare a brief review and recommendation for each project. The intent is only to provide a limited amount of discretion to the Redevelopment Commission. The process is meant to be more of an administrative check for program compliance. For example, a new Mexican Restaurant wants to open. The Commission has no role in determining elements like "do we have enough Mexican food establishments?", there is no role in determining the number of seats, the inside décor, whether they are open for lunch during the week, etc.... The review would only pertain to the work where funding is being requested. In this case, let's assume the only funding requested for a grease interceptor, the only role of the Commission is to determine if it is an eligible expense, and the required documentation is in place. The Commission review does not bind, commit or imply any other kind of review or approval that may be required by the City or other jurisdictions. For example, the restaurant finds out later in the process that they need an additional fire escape. That is not an element that requires the review of the Redevelopment Commission. The burden is on the applicants to determine project needs and costs before applying for a grant.
- Outstanding/Notable Building Exterior building improvements that require physical modification of the structure shall require the review and approval of the Mishawaka Historic preservation Commission (HPC). Replacing an awning, windows, enlarging a storefront would require HPC approval. Façade painting, a mural, most decorative lighting, outside seating, interior remodels, would not. <u>HPC approval needs to occur before Redevelopment Commission approval</u>. Since these structures are not locally designated with adoptive standards a Certificate of Appropriateness (CoA) is not required. The required review and approval of the HPC is only generic for assurance that the proposed improvement is both period and architecturally appropriate.
- Once approved by the Redevelopment Commission, the loan is initiated and guaranteed for an established period of time. Written documentation of the approval is provided to the applicant so that it can be used for proof of a funding commitment if loans are required.
- <u>No City funding would be provided until the end of the project</u>. Upon completion, the funding is provided and the loan is then forgiven at the next regularly scheduled Redevelopment Commission meeting. This removes the need for credit applications, draws, or monitoring by staff. By being forgiven, there is no repayment or collections

issue associated with the loans. We just need a simple review to determine if the project has been completed, or not. This also prevents us from jeopardizing City funding if a project remains half completed.

- If an applicant receives a forgivable loan and they fail to execute, let's say they only perform half of the renovations. A grace period will be provided to complete that is determined by the Redevelopment Commission at the time of approval. If the applicant fails to meet the time frame, they would be provided written notice of loan termination from the Redevelopment Commission with a stated expiration date. If after this stated time the project remains incomplete, the loan is terminated, and **no city funding will be provided**. This includes projects where significant portions of the intended work is complete (no partial payments). This then allows the City to remove the funding/project from our books and allow the funds to be loaned to another project.
- Loans are limited only to the property owners. Loans shall not be made to tenants or to individual contractors. For example, if a contractor starts a project but fails to complete it, the City does not want to be party to the contract between the owner and the entity performing the work. The responsibility rests with the owner. The City also does not want to be involved with or get between the owner and tenants in the building. If a tenant is responsible for completing work, and has a dispute with the owner, the owner is the only person/entity responsible relative to the forgivable loan/grant.

Other Limitations:

In determining the requirements of a forgivable loan program, and in reviewing other programs that are in surrounding communities, additional parameters such as the minimum size of projects have been included to better direct the use of funds. Having a minimum threshold of value is important to maximize impact and limit the potential number of loans/administration time required to process. No fee is required to apply.

- Minimum forgivable loan/grant amount- $5,000, with a maximum grant amount of $50,000. The minimum can be waived at the discretion of the Redevelopment Commission for permanent outside seating and streetscape landscaping, new permanent façade lighting, decorative façade lighting, murals and publicly displayed art, and storefront window enhancements.
- If work is hired out to contractor, the applicant shall provide multiple quotes as part of the application process, and is required to contract with the lowest qualified bidder.
- If work is being performed by the owner, only material costs are eligible for reimbursement. Costs are reimbursed upon successful installation/occupancy, not upon receipt of the ordered materials.
- Grant funding shall only be provided for new projects (as determined by Redevelopment Commission). This program is not meant for projects that have received building/improvement location permits and have started work prior to the approval of a grant application.
- All restaurant, café, bar, entertainment venues related improvements must be accompanied by a signed application committing to the "Municipal Riverfront Development Project Area Liquor License Eligibility Requirements and Evaluation Criteria", regardless of being located in the district.

Eligible Projects and draft loan/grant match percentages:

After each project category of grant eligibility listed below, there is a description followed by each area that is eligible for funding. There are four types of properties based on location and historic rating. After each property type, a percentage is listed. This percentage is the maximum percentage that would be potentially be covered of the overall project cost. For example, if the proposed project has a $50,000 total cost and the percentage listed is 50%, the project would be eligible for $25,000 through the forgivable loan/grant program. If the same project had an overall $150,000 cost and it was eligible for 50%, the maximum the project would be eligible for is $50,000, which is the maximum dollar amount permitted through the program.

A high value is being placed on aesthetics. Also, as illustrated by the examples above, this program is oriented for projects that are under a few hundred thousand dollars. Projects that are above that may be eligible for other assistance and we would encourage anyone interested in making larger investments to talk to staff directly about other incentives such as tax abatement and the use of TIF funds.

Although specific projects have different percentages that are eligible for grant funding, multiple project types are expected to be submitted in one application for funding. For example, a new restaurant may request grant funds for a grease interceptor, interior remodel, and aesthetic lighting as part of a renovation project. This would be one application, not three. It is important for property owners to figure out all eligible projects at one time since there is a required timeframe that would limit/prevent eligibility for a second grant immediately.

Eligible Projects and draft loan/grant match percentages:

Use changes:

Many of the upper floors within the historic downtown core of multistory buildings that have remained vacant and unused for years. This could be for multiple reasons. Loan funds could be used for all necessary improvements needed to make the space occupiable where it is currently not possible based on building or fire codes. Funds shall only be provided on projects where occupancy is approved/permitted at the conclusion of the project.

- C-3- Not Eligible, Historic Core- 25%, Historic Core Outstanding/Notable- 50%, West End- 25%

Fire Suppression and Fire/Building Code Life Safety Improvements-

There are many commercial buildings in our downtown that may be grandfathered, or require improvements to allow occupancy based on a desired change of use. This includes installation of fire suppression equipment or ingress/egress improvements needed to obtain occupancy on upper floors..

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Deborah S. Block, IAMC, MMC

FEB 13 2025

City Clerk
Mishawaka, IN

APPEAL #25-01

RESOLUTION NO. 2025-04

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1015 W Edison Road, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1015 W Edison Road, Mishawaka, Indiana**, more particularly known and described as follows:

Parcel I: A tract of land in the Northwest Quarter of Section 4, Township 37 North, Range 3 East, City of Mishawaka, St Joseph County, Indiana, said tract being more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 4; thence North 90°00'00" East along said North line, a distance of 420.27 feet; thence South 00°13'59" West a distance of 40.00 feet to the South line of Edison Road; said point being the true place of beginning; thence continuing South 00°13'59" West a distance of 151.89 feet; thence north 90°00'00" East a distance of 75.00 feet; thence north 00°13'59" East a distance of 151.89 feet to a point on the South line of Edison Road; thence South 90°00'00" West along said South line a distance of 75.00 feet to the place of beginning.

Parcel II: A tract of land in the Northwest Quarter of Section 4, Township 37 North, Range 3 East, City of Mishawaka, St Joseph County, Indiana, said tract being more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 4; then North 90°00"00" East along said North line, a distance of 345.27 feet; thence South 00°13'59" West a distance of 40.00 feet to the South line of Edison Road; said point being the true place of beginning; thence continuing South 00°13'59" West a distance of 151.89 *feet; thence North 90°00'00" East a distance of 75.00 feet; thence North 00°13'59" East a distance of 151.89 feet to a point on the South line of Edison Road; thence South 90°00'00" West along said South line a distance of 75.00 feet to the place of beginning.*

The Use Variance will allow a tattoo establishment within the C-1 General Commercial District subject to the following conditions of approval:

1. The tattoo and body piercing studio must comply with all regulations and permitting requirements per Chapter 18-Business Regulations, Article X-Tattoo and Body Piercing Establishments of the City of Mishawaka.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during any improvements to the existing structure and all necessary licenses and permits for tattooing and body piercing will obtained;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the adjacent properties are zoned for a variety of commercial uses.

3. The need for the variance arises from some condition peculiar to the property in that Tattoo is a Use Variance or Conditional Use regardless of the underlying zoning.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for specific uses within commercial zoned properties;

5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

STAFF REPORT

Location: 1015 W Edison Road

Date: Feb. 11, 2025

Appeal: 25 01

Prepared By: DMB

GENERAL INFORMATION

Applicant:	M J Investment / Haley Korpal
Status:	Property Owner / Tenant
Request:	Use Variance to allow for a tattoo studio
Zoning Classification:	C-1 General Commercial
Acreage:	0.57 acres
Applicable Regulations:	Section 137-42 Board of Zoning Appeals Use Variance, Section 137-301 C-1 General Commercial Uses, Indiana Code 36-7-4-918.4

SPECIAL INFORMATION

Area Development Pattern:	North:	C-1 General Commercial
	South:	R-3 Multi-Family Residential
	East:	C-1 General Commercial
	West:	C-1 General Commercial
Thoroughfare:	W Edison Rd	
Council District:	6	
School District:	Penn-Harris-Madison	
Township:	Penn	
Public Utilities:	All utilities are available to the site	
Comprehensive Plan:	General Commercial	

ANALYSIS

The Appellants are requesting a Use Variance to allow tattooing. The tenant, Haley Korpal, owns The Body Art Gallery Tattoo and Piercing Studio at 2336 Miracle Lane (Town & Country Plaza). A Use Variance to allow tattooing was approved in 2006 for 2336 Miracle Lane. The tenant is wanting to relocate her business to 1015 W Edison Road. The tenant, Haley Korpal, is an established business owner in the Mishawaka area.

The property is a tenant space located at 1015 W Edison Road in the previous Shirk's Piano location. It is surrounded by C-1 General Commercial properties on the east (vacant land), west (Army/National Guard Recruiting Office) and north (bank and movie theatre). The property is bordered by R-3 Multi-Family Residential on the south (Silver Birch of Mishawaka).

The property contains a 6,200 square foot building with 14 parking spaces.

The tenant will be required to obtain all necessary licenses from the City and the County Health Department prior to opening the business.

All pertinent City departments have reviewed and approved.

RECOMMENDATION

The Planning Staff recommends approval of Appeal #25-01 to allow tattooing at 1015 W Edison Rd. This recommendation is based upon the following findings of fact *per Indiana Code 36-7-4-918.4*:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during any improvements to the existing structure and all necessary licenses and permits for tattooing and body piercing will obtained;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the adjacent properties are zoned for a variety of commercial uses.

3. The need for the variance arises from some condition peculiar to the property in that Tattoo is a Use Variance or Conditional Use regardless of the underlying zoning.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for specific uses within commercial zoned properties;

5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map

Aerial

South facing view from across West Edison Road

Southwest facing from West Edison Road

Board of Zoning Appeals
City of Mishawaka, IN

Received
JAN 2 1 2025
Planning and
Community Development

AP
25-01

January 21, 2025

Good afternoon,

My name is Haley Korpal and I am the current owner of The Body Art Gallery Tattoo and Piercing Studio located at 2336 Miracle Lane, Mishawaka, IN 46545. I have been in business at this location in Mishawaka for the past 19 years. I am requesting a use variance at the property located at 1015 W. Edison Road, City of Mishawaka, Penn Township, State of Indiana 46545 so that I can potentially move my business to a new location. The property is owned by MJ Investments who supports the move of my business into this property.
In order to move my business and conduct tattoos and body piercings, I would need a use variance. Without this variance I would not be able to do tattoos and body piercings at this location as it is currently zoned C-1 General Commercial under the zoning ordinance of the City of Mishawaka.

The approval will not be injurious to the public health, safety, morals and general welfare of the community because the space where tattoos will be conducted will be managed according to all regulatory codes. Additionally, tattoos and piercings have experienced resurgence in popularity and acceptance in recent decades. Coupled with advancements in tattoo pigments and ongoing refinement of the equipment used, this has led to an improvement in the quality of tattoos and piercings being produced.
The use and value of the area adjacent to the property included in the variance will not be affected in a substantial adverse manner because the tenant space is surrounded by commercial development and there is an adequate private parking lot.
The need for the variance arises from some condition peculiar to the property involved in that the geographic position and size of the space provide an inherent separation between other commercial uses.
The strict application of the terms of this chapter would constitute an unnecessary hardship in the use of the property because tattoo establishments are permitted in C-1 General Commercial zoned properties but only with the approval of a use variance. The location of properties zoned C-1 General Commercial that would meet the strict requirements of the code for a tattoo and piercing business within the city is almost non-existent.
The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan which indicates General Commercial.

I believe that as an established business owner in Mishawaka my business will bring other substantial business to the surrounding area. The Body Art Gallery will continue to adhere to all St. Joseph County Health Department rules and will operate with the upmost sanitation and care for our customers. This new location, if approved, will also give me the opportunity to continue to grow my business in the beautiful City of Mishawaka.

I respectfully request a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Best Regards,

Haley Korpal-Petitioner

Haley Korpal
1255 Amelia St. Apt. 1010
Granger, IN 46530
574-386-9258
hkorpal13@gmail.com

The Body Art Gallery
2336 Miracle Lane
Mishawaka, IN 46545
574-255-6088

MJ INVESTMENTS LLC
101 E. MISHAWAKA AVENUE
MISHAWAKA, IN 46545
TELEPHONE: 574-850-1565

January 20, 2025

Attn: City of Mishawaka

I hereby confirm 1015 W. Edison, Mishawaka, Indiana (legal description attached) is owned by MJ Investments LLC.

Yours truly,

MJ Investments LLC
John Becker, Member

1015 W. Edison

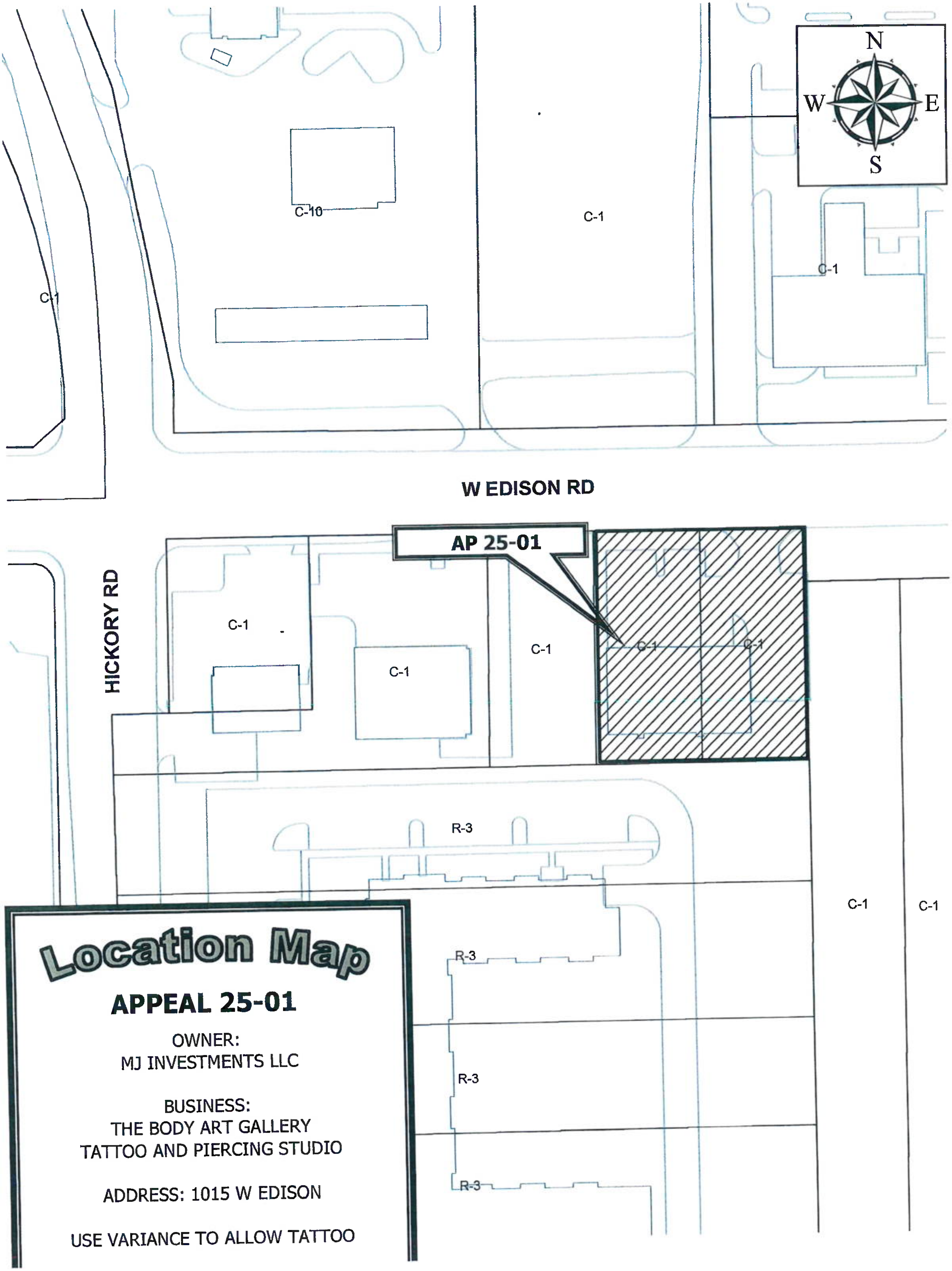
EXHIBIT A VM

PARCEL I: A tract of land in the Northwest Quarter of Section 4, Township 37 North, Range 3 East, City of Mishawaka, St. Joseph County, Indiana, said tract being more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 4; thence North 90°00'00" East along said North line, a distance of 420.27 feet; thence South 00°13'59" West a distance of 40.00 feet to the South line of Edison Road; said point being the true place of beginning; thence continuing South 00°13'59" West a distance of 151.89 feet; thence North 90°00'00" East a distance of 75.00 feet; thence North 00°13'59 East a distance of 151.89 feet to a point on the South line of Edison Road; thence South 90°00'00" West along said South line a distance of 75.00 feet to the place of beginning.

PARCEL II: A tract of land in the Northwest Quarter of Section 4, Township 37 North, Range 3 East, City of Mishawaka, St. Joseph County, Indiana, said tract being more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of said Section 4; then North 90°00'00" East along said North line, a distance of 345.27 feet; thence South 00°13'59" West a distance of 40.00 feet to the South line of Edison Road; said point being the true place of beginning; thence continuing South 00°13'59" West a distance of 151.89 feet; thence North 90°00'00" East a distance of 75.00 feet; thence North 00°13'59" East a distance of 151.89 feet to a point on the South line of Edison Road; thence South 90°00'00" West along said South line a distance of 75.00 feet to the place of beginning.



Location Map

APPEAL 25-01

OWNER:
MJ INVESTMENTS LLC

BUSINESS:
THE BODY ART GALLERY
TATTOO AND PIERCING STUDIO

ADDRESS: 1015 W EDISON

USE VARIANCE TO ALLOW TATTOO

RESOLUTION NO. 2025-05
Civil City Property Lease with Option to Purchase- 400 block of East 10th Street

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, AUTHORIZING THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION TO LEASE WITH OPTION TO PURCHASE MUNICIPALLY OWNED PROPERTY IN ACCORDANCE WITH THE CITY OF MISHAWAKA MUNICIPAL CODE CHAPTER 2, ARTICLE 5, DIVISION 3, SEC. 2-492 & 493

WHEREAS, pursuant to the City of Mishawaka Municipal Code, whenever the Mayor or any department head determines that any personal property or real estate belonging to the City is no longer needed, a written request shall be presented to the Common Council for the passage of a resolution authorizing the sale of the property. The procedure for sale of the City property shall conform to current state law; and

WHEREAS, the City has determined that the property located in the 400 block of East 10th Street is not needed for the Central Services Department; and

WHEREAS, redevelopment and the stimulation of economic development are of benefit to the health and welfare of the people of Indiana and the citizens of Mishawaka. Economic development is a public use and purpose for which public money may be spent; and

WHEREAS, the Redevelopment Commission is the entity of the City which has been delegated the power and duty to investigate, study, and develop areas within the corporate boundaries of the City of Mishawaka that has been determined to be stagnant or deteriorating in order to encourage economic development; and

WHEREAS, the legal description of the two parcels that make up the property in the 400 block of East 10th Street are as follows:

Parcel 1:
Lots 11 and 12 in Ward & Laing's 1st Addition, Mishawaka, IN 46544
Tax Key numbers: 016-1134-5259,
Duplicate Number: 71-09-15-352-006.000-023

Parcel 2:
The East 20' of Lot 10 in Ward & Laing's 1st Addition, Mishawaka, IN 46544
Tax Key Numbers: 016-1134-525901
Duplicate Number: 71-09-15-352-005.000-023

WHEREAS, the Developer is the Mishawaka-Penn-Harris Public Library. The Developer's proposal contemplates constructing a storage building with associated improvements for its vehicles, equipment, and supplies; and

WHEREAS, the Administration under the direction of Mayor Wood selected this proposal after considerable review and consideration; and

WHEREAS, the Administration believes that the Project complies with applicable federal, state and local laws under which the Project has been undertaken; and

WHEREAS, the Redevelopment Commission and the Developer are anticipating entering into a Lease Agreement which will be heard by the Redevelopment Commission on February 24th, 2025 concerning the Lease and potential sale of the property and completion of the Developer's Project, if this resolution is approved by the Common Council; and

WHEREAS, the Administration and Developer each understand and agree that certain actions contemplated by the Agreement are required to be undertaken by persons, agencies or entities that were not party to the Lease Agreement and that any action by such third parties shall require independent approval by the respective person, agency, entity or governing body thereof; and

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Mishawaka, Indiana, that:

1. The City of Mishawaka Redevelopment Commission is authorized to lease with the option to sell the Civil City owned property in the 400 block of East 10th Street as identified herein; and

2. This Resolution shall be in full force and effect from and after its passage by the Common Council.

Passed and adopted at a meeting of the Common Council of the City of Mishawaka, Indiana, held on February 17, 2025.

COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA

____
Gregg Hixenbaugh, President

ATTEST:

____
Deborah S. Block
Clerk of the City of Mishawaka, Indiana

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the ______ day of February, 2025, at the hour of _______ ____.m.

____
Deborah S. Block
Clerk of the City of Mishawaka, Indiana

This Resolution approved and signed by me on the ____ day of February, 2025, at the hour of _________ ___.m.

____
David A. Wood
Mayor of the City of Mishawaka, Indiana

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR **DEPARTMENT OF LAW**

February 12, 2025

Dear Honorable Members of Mishawaka Common Council,

Re: Resolution No. 2025-05

We are requesting your approval of Resolution No. 2025-05, which authorizes the City of Mishawaka Redevelopment Commission to enter into a Lease with an Option to Purchase with the Mishawaka-Penn-Harris Public Library. The City is the owner of the property, located in the 400 block of East 10th Street, and will Lease the property to the Library. The property is currently unused and within the Central Services area.

The Library intends to erect a storage facility on the site, along with some limited parking. A conceptual plan is attached to the Lease as Exhibit B.

The Library Board approved the Lease Agreement at their January 23rd, 2025 meeting. Upon Council approval, this will be forwarded to the City of Mishawaka Redevelopment Commission for consideration on February 24th, 2025.

Thank you for your consideration of this matter.

Sincerely,

John J. Roggeman

John J. Roggeman
Corporation Counsel

John J. Roggeman
Corporation Counsel
100 Lincolnway West
Mishawaka, Indiana 46544
(574) 258-1637
fax: (574) 254-0197

David V. Bent
Deputy City Attorney
320 West Fourth Street
Mishawaka, Indiana 46544
(574) 255-3680
fax: (574) 255-3969

www.mishawaka.in.gov

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("Agreement") is executed by the parties hereto on the dates set forth next to their respective signatures, the latter of which shall be considered the "Effective Date" of this Agreement by and between the City of Mishawaka, Indiana , an Indiana municipal corporation with its primary offices located at 100 Lincolnway West, Mishawaka, Indiana 46544, acting by and through its Redevelopment Commission ("Lessor"), and the Mishawaka-Penn-Harris Public Library, a tax supported Indiana political subdivision with its primary offices located at 209 Lincolnway East, Mishawaka Indiana 46544 ("Lessee") each of which may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WHEREAS Lessor owns and desires to lease to Lessee, and Lessee desires to lease, the Site (as defined herein); and

WHEREAS Lessor and Lessee wish to enter into this Agreement for the lease of the Site for use by Lessee as per the terms of this Agreement.

NOW, THEREFORE for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Agreement to Lease.** Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, according to the terms and conditions set forth herein, the real estate described in Exhibit A attached hereto (the "Site").

2. **Purpose.** The Site may be used and occupied only for the following purpose (the "Permitted Use"): Construction by the Lessee at its expense of a storage building and associated improvements for its vehicles, equipment, and supplies. This shall include, without limitation, all paving, stormwater management, utilities access, landscaping, fencing and gate improvements as required to meet the minimum standards of the City of Mishawaka Zoning Ordinance and applicable building and fire codes. An administrative site plan must be filed by the Lessee and approved by the Lessor prior to the start of construction. The building and related improvements shall be completed no later than June 1, 2026 or as extended by mutual agreement of the Parties. A copy of the conceptual plan is attached for reference as Exhibit B.

3. **Shared Facilities and Site Maintenance.** In connection with the Lessee's use of the Site, it may share the fenced and secure environment that exists at the Lessor's R. Mike Watson Central Services Facility located at 700 South Union Street, Mishawaka, Indiana. Given the small size of the Site and the importance of providing the best public service possible by both Parties, the Lessor agrees to allow the Lessee, as a public taxing entity that also serves the City's constituents, to modify at its expense the existing fenced compound that currently exists at the City's Watson Central Services facility to include the proposed storage building as may be approved by the Lessor. The

Lessor will provide the Lessee with key fob access to the R. Mike Watson Central Services facility through the main gate to the facility off of Union Street. The Lessor will also set up a separate account and allow for the use of the Lessor's fueling facility in a manner identical to what is currently provided and jointly used by the School City of Mishawaka. The Lessor will continue to perform basic routine property maintenance including cutting the grass and basic snow removal off the drivable roads within the Watson Central Services Facility as is currently performed for that property, including continuing to cut the grass on the portion of the leased Site and basic snow removal from the interior road, driveway access to the Lessee's storage building, and the 10th Street sidewalk adjoining the leased Site. However, the Lessor is not required to provide the Lessee with any specific site maintenance that is not currently being performed as part of the Lessor's routine overall Watson Central Services Facility site maintenance. In addition to all building maintenance, the Lessee shall be responsible for items such as maintaining utilities, tree trimming, and any other use/location specific maintenance on and around the proposed storage building except as otherwise specifically agreed herein with respect to the Lessor's above-identified basic routine Central Services Facility property maintenance services. The Lessee shall provide the Lessor with a right of access and hold harmless agreement regarding the Lessor's provision of its basic routine property maintenance services. Although there is no intent to do so, in order to not unduly bind future City administrations, the Lessor may at its discretion after the expiration of ten (10) years remove access through the Central Services Facility, remove use of the Lessor's fueling facility as identified herein, and/or stop performing the incidental maintenance identified herein. If the Lessor decides to take such action, then (in order to give the Lessee sufficient time to appropriately budget and plan for the change) the Lessor shall give the Lessee at least one (1) year advance written notice, and shall at its expense take such basic measures as may be necessary to separate the leased Site from the Lessor's other property, provide access to the leased Site from 10th Street, and provide for continuous access to the leased Site during an appropriate transition period. Given administrative demands, independent of the lease period identified herein, the Lessor also reserves the right to remove access to the fueling facility upon thirty (30) days advance written notice to the Lessee at any time during the duration of the lease.

Nothing herein shall give Lessee the right to use the Site for any other purpose without the Lessor's prior written consent.

4. **Term.** This Agreement will be for a ten (10) year term beginning on March 1, 2025 and ending on March 1, 2035 (the "Term"). The Lessee shall have four options to renew this Agreement under the terms and conditions of the initial lease term for additional ten-year terms, to be exercised in writing and delivered to the Lessor at least three months prior to expiration of the term to be extended. The Parties hereto may also agree to additional extensions of this Agreement upon such terms and conditions as may be agreed upon in writing and signed by the Parties at the time of any such extension. If the Lessor decides to sell the leased Site to any third party during the term

of this Agreement or any renewal thereof, then it shall give the Lessee reasonable advance written notice of its intent to sell, and the Lessee shall have an option to purchase the leased Site as hereinafter provided in Paragraph 24 of this Agreement. Subject to the Lessee's exercise of such option, this Agreement will automatically terminate upon the closing of the Lessor's sale of the Site.

5. **Rent.** Lessee will pay Lessor rent in advance on the Effective Date in the amount of Ten and No/100 Dollars ($10.00), which represents One and No/100 Dollars ($1.00) per year for the duration of the initial lease term. Rent for each four (10) year renewal option exercised by the Lessee under Paragraph 4 of this Agreement shall also be in the amount of One and No/100 Dollars ($1.00) per year, payable in advance for the entire renewal period upon exercise of the renewal option.

6. **Council Approval, Rezoning and Replatting.** The City shall, within a reasonable period following the Effective Date of this Agreement, prepare and submit a Common Council Resolution authorizing this transactionas well as process a rezoning request for the property to I-1 Light Industrial to allow for the storage building use as intended. Both the Council Resolution and Rezoning are at the discretion of the Mishawaka Common Council. If one or both are denied by the Common Council, this agreement shall be considered null and void. These approvals are required before any construction can occur on the property. If required as part of a future sale, the Lessee shall be responsible for any required replatting of the Site.

7. **Utilities.** Lessee shall pay the cost of all utility services during the Term, including but not limited to gas, water, trash removal, and electricity used on the Site.

8. **Delivery of Possession.** Lessor will deliver exclusive and lawful possession of the Site to Lessee on the start date of the Term.

9. **Holdover Tenancy.** Unless this Agreement has been extended by mutual written agreement of the Parties, there will be no holding over past expiration of the most recently agreed Term. If Lessee retains possession past expiration of such Term, it shall be liable for any damages incurred by Lessor as a result of the holdover.

10. **Condition of the Site.** Lessee has examined the Site and accepts the Site in its current condition "AS IS" and "WITH ALL FAULTS." EXCEPT AS EXPRESSLY SET FORTH HEREIN, LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, HABITABILITY, SUITABILITY, OR CONDITION. Lessee acknowledges that Lessee has not relied on any representations or warranties by Lessor in entering this Agreement.

11. **Use of the Site.** Lessee agrees to use the Site only for the Proposed Use consistent with the conceptual plan attached hereto as <u>Exhibit B</u> and will not commit waste upon the Site. Lessee will, at its sole expense, maintain the Site and its

improvements in good repair and make all necessary repairs thereto. Lessee will not use the Site for any unlawful purpose or in any manner that will materially harm Lessor's interest in the Site.

12. **Improvements and Alterations.** The conceptual plan attached hereto as Exhibit B is acceptable to the Lessor. However, Lessee may not make any other material improvements, alterations, additions, or other changes to the Site without the written approval of the Lessor, which shall not be unreasonably withheld. Lessee agrees that any construction will be performed in a good and workmanlike manner and will comply with all applicable laws. All improvements, alterations, additions, or other changes to the Site shall become the property of Lessor upon the termination of this Agreement. Lessee shall have the right to erect a sign related to its business as permitted by applicable codes and ordinances.

13. **No Mechanics Lien.** Lessee will not permit any mechanics or other liens to be filed against Lessor's interest to the Site as the result of any work performed for or obligations incurred by Lessee. Lessee will indemnify Lessor for any liability, cost, or expense if any such lien is filed.

14. **Permits and Approvals.** Except for the Lessor's responsibility for obtaining any required rezoning of the Site, the Lessee will be responsible for obtaining all licenses, permits, and approvals required by any federal, state or local authority in connection with its use of the Site. Lessor will cooperate with Lessee and provide the necessary documents to obtain such licenses, permits, and approvals.

15. **Compliance with Laws.** Lessee covenants and agrees to comply with all federal, state and local laws, regulations, and ordinances affecting the Site and its use of the Site. Lessee will also comply with all requirements necessary to keep in force fire and liability insurance covering the Site.

16. **Hazardous Substances.** Lessee will not keep or store on the Site any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion on the Site or that might be considered hazardous or extra hazardous by any responsible insurance company.

17. **Insurance.** At all times during the Term, Lessee will maintain insurance for the Site covering:

A. Property Insurance. Property insurance covering all of Lessee's improvements, equipment, and other personal property located on the Site.

B. General Liability. Commercial liability insurance covering bodily injury, death, or property damage in an amount not less than One Million and No/100 Dollars ($1,000,000.00) per occurrence.

Each such insurance policy shall name Lessor as an additional insured or interested party. Lessee will provide Lessor certificates evidencing the required insurance policies prior to the start date of the Term.

18. **Waiver of Subrogation**. Lessor and Lessee each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by insurance as required under this Agreement. Lessor and Lessee will cause each insurance policy carried by Lessor or Lessee relating to the Site to include or allow a full waiver of any subrogation claims.

19. **Indemnification.** To the extent permitted by law, Lessee agrees to indemnify, defend, and hold harmless Lessor from any and all claims, actions, liabilities, suits, demands, damages, losses, or expenses, including attorneys' fees, arising out of or relating to (i) Lessee's use and occupancy of the Site, (ii) any work done by or on behalf of Lessee on the Site, (iii) Lessee's negligence or willful misconduct, and/or (iv) Lessee's breach or default of any of the terms of this Agreement, provided however, Lessee's obligations under this section shall not extend to any claims actions, liabilities, suits, demands, damages, losses, or expenses arising from the sole negligence or willful misconduct of Lessor.

20. **Access to Site.** Lessor or its agents may have access to the Site at reasonable times to inspect the Site, to show the Site to prospection lenders or buyers, and as otherwise needed to perform its obligations under this Agreement.

21. **Default.** The following shall each constitute an "Event of Default":

A. Lessee fails to make any required payment due under this Agreement.

B. Lessee fails to perform any obligation or condition or to comply with any term or provision of this Agreement.

22. **Termination by Lessor.** Upon the occurrence of an Event of Default by Lessee which continues for a period of ninety (90) days after receiving written notice of the default from Lessor, Lessor has the right to terminate this Agreement and take possession of the Site. Even if the Lessee is not in default, in order to not unduly bind future City administrations, the Lessor may, after ten (10) years and upon not less than one (1) year's advance written notice to the Lessee, terminate this lease for any reason. Lessor's rights hereunder shall be in addition to any other right or remedy now or hereafter existing at law or equity.

23. **Termination by Lessee.** In the event of a breach by Lessor of any of its obligations, covenants, or agreements under this Agreement which continues for a period of ninety (90) days after receiving written notice of the breach from Lessee, Lessee has the right to terminate this Agreement without penalty, upon written notice to Lessor.

24. **Purchase Option. The Lessee may, at any time during the term of this Agreement or any renewal thereof, exercise an option to purchase the leased Site for the sum of One and No/100 Dollars ($1.00). Notice of the Lessee's exercise of this option shall be in writing and delivered to the Lessor as provided herein for the delivery of notices. Upon exercise of such option the Lessor will provide the Lessee with access and utility easements over the Lessor's property to serve the leased Site from 10th Street, and the Lessee shall be responsible for any required replatting of the Site. All other costs associated with the closing of such purchase shall be at the Lessee's expense. It is understood that items such as the replatting of the site will take time. The Lessor shall afford the Lessee such time as required to diligently work through the steps as necessary to close on the Lessor's property.**

25. **Surrender of the Site.** If Lessee fails to exercise its purchase option, then, upon termination of this Agreement, the Lessee shall return the Site to Lessor in good condition and repair, ordinary wear and tear excepted. Within ninety (90) days following the termination of this Agreement, Lessee will remove all equipment, materials, fixtures and other personal property belonging to Lessee from the Site. Any property left on the Site after ninety (90) days following the termination of this Agreement will be deemed to have been abandoned by Lessee and may be retained by Lessor.

26. **No Partnership.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other fiduciary relationship between the Parties other than that of Lessor and Lessee. Neither Party is authorized to act as an agent or on behalf of the other Party.

27. **Condemnation.** If all or a material portion of the Site necessary for Lessee's Permitted Use of the Site is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by the right of eminent domain, this Agreement shall terminate on the date of such taking, and all rent under this Agreement shall be prorated and paid to such date. If such taking is of less than a material portion of the Site, this Agreement shall remain in full force and effect; provided however, the rent due under this Agreement shall be reduced to such extent as maybe fair and reasonable under the circumstances. Lessor and Lessee shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.

28. **Limitation of Liability.** Lessor is not responsible or liable for any loss, claim, damage, or expense resulting from any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or willful misconduct of Lessor.

29. **Assignment and Subletting.** Lessee will not assign this Agreement as to all or any portion of the Site or make or permit any total or partial sublease or other transfer of all of or any portion of the Site without Lessor's consent.

30. **Quiet Enjoyment.** If Lessee pays the rent and performs all other obligations under this Agreement, Lessee may peaceably and quietly hold and enjoy the Site during the Term.

31. **Force Majeure.** In the event that Lessor or Lessee shall be delayed or hindered in or prevented from the performance of any act other than Lessee's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other Party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

32. **Notices.** All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or sent via certified or registered mail, addressed to Lessor or Lessee at the address stated above, or to another address that either Party may designate upon reasonable notice to the other Party.

33. **Further Assurances.** Each Party hereto agrees to execute and deliver any additional documents and to do all such other acts as may be necessary to carry out this Agreement and each Party's rights and interests in this Agreement.

34. **No Waiver.** No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly in writing.

35. **Severability.** If any provision of the Agreement is held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid or unenforceable parts had not been included in this Agreement.

36. **Successors and Assignees.** Except as otherwise provided herein, this Agreement will inure to the benefit of and be binding upon the Parties and their respective permitted successor and assigns.

37. **Governing Law.** The terms of this Agreement shall be governed exclusively by the laws of the State of Indiana.

38. **Disputes.** Any dispute arising from this Agreement shall be resolved in the courts of the State of Indiana.

39. **Amendments.** This Agreement may not be modified except in writing signed by both Parties.

40. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same document.

41. **Headings.** The section heading herein are for reference purposes only and shall not otherwise affect the meaning, construction, or interpretation of any provision in this Agreement.

42. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to the Site.

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives, have executed this Agreement on the dates set forth below, the latter of which shall be the Effective Date of this Agreement.

LESSOR: The City of Mishawaka, Indiana, acting by and through its Redevelopment Commission

____
Printed Name: ____________________
Title: __________________________
Date: _______________________2025

Printed Name: ____________________
Title: __________________________
Date: _______________________2025

LESSEE: Mishawaka-Penn-Harris Public Library

Donna Meeks
Printed Name: Donna Meeks
Title: Director
Date: 1/23/25

<u>EXHIBIT A</u>

to

10th Street Ground Lease

between

The City of Mishawaka, Indiana (Lessor)

and

The Mishawaka-Penn-Harris Public Library (Lessee)

LEGAL DESCRIPTION OF LEASED SITE:

The following described real property located in St. Joseph County, Indiana:

Lots 11 and 12 in Ward & Laing's 1st Addition
(Property Tax #s: 016-1134-5259 / 71-09-15-352-006.000-023)

AND

The East 20' of Lot 10 in Ward & Laing's 1st Addition
(Part of Property Tax #s: 016-1134-525901 / 71-09-15-352-005.000-023)

See attached graphic depiction

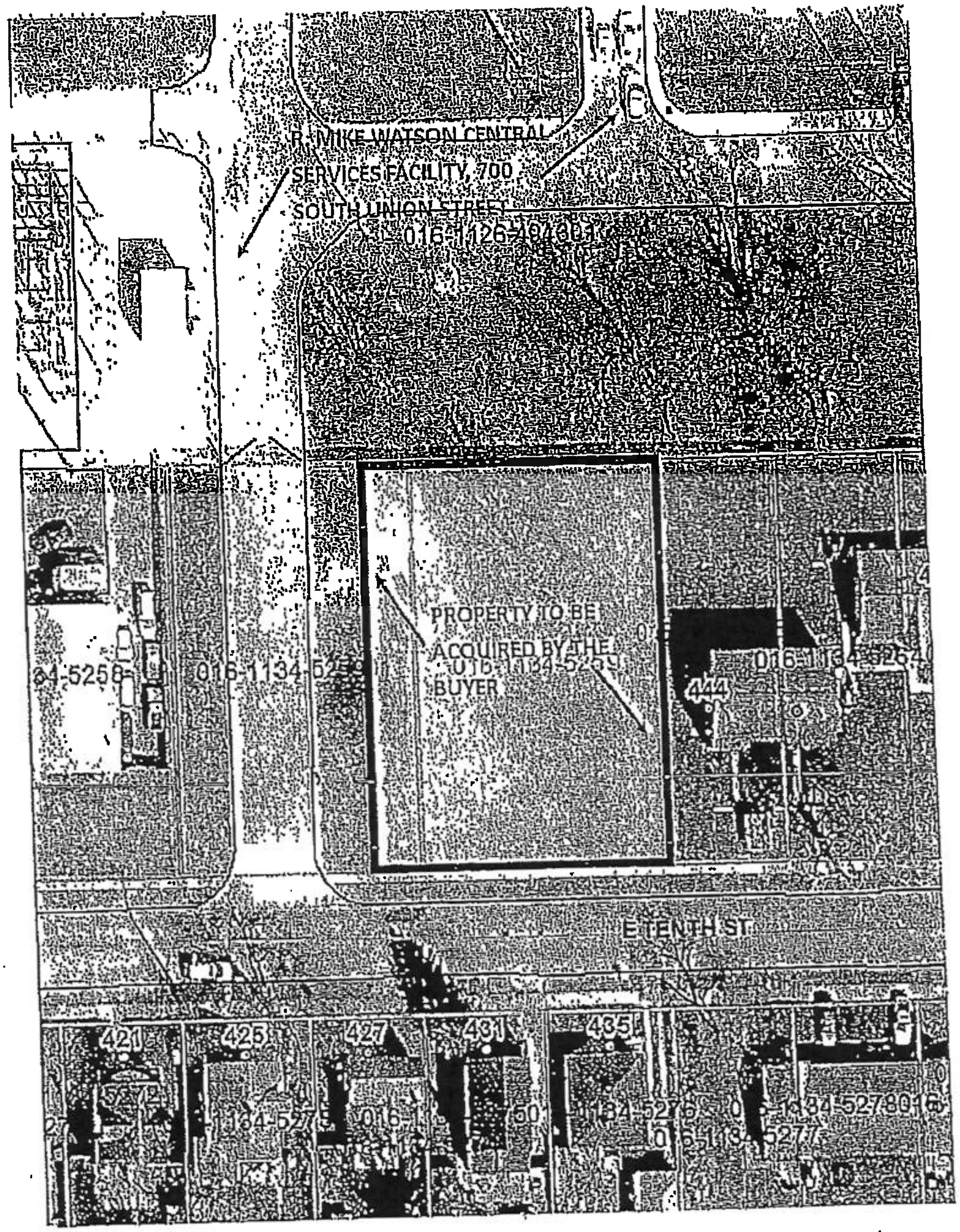
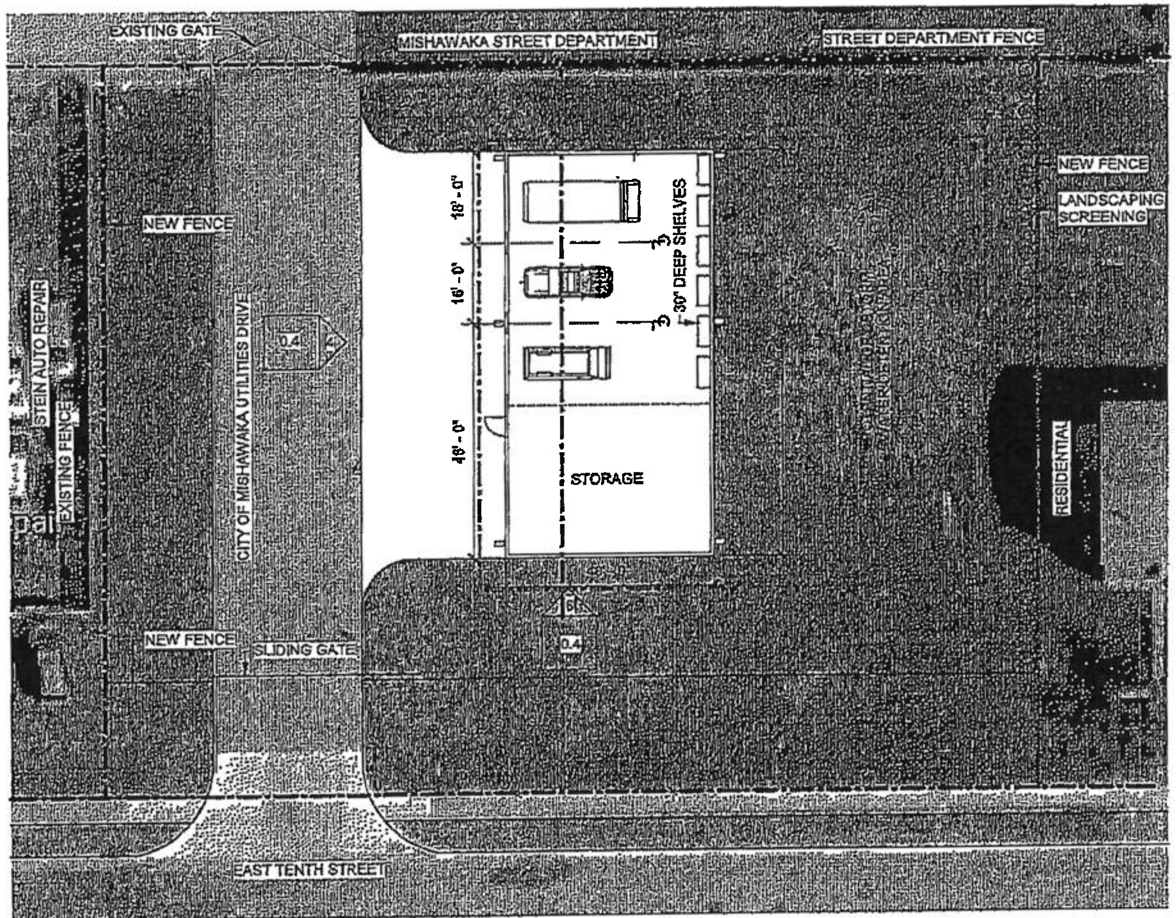


Exhibit A

Page 2 of 2



NORTH

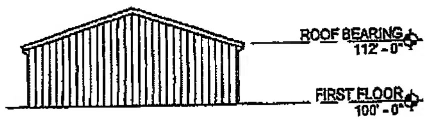
1 FIRST FLOOR PLAN
SCALE: 3/64" = 1'-0"

KEY PLAN
PROPERTY LINES
SET BACKS
LOT LINE

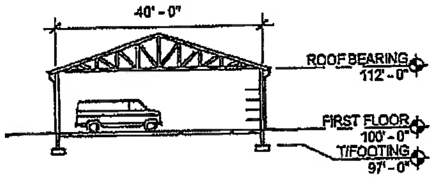
SCALE: 3/64" = 1'-0"
0 32' - 0" 64' - 0" 128' - 0"

DLZ DLZ INDIANA, LLC	MISHAWAKA	MISHAWAKA-PENN-HARRIS PUBLIC LIBRARY. CAPITAL IMPROVEMENTS - 2020 GENERAL OBLIGATION BOND NEW VEHICLE STORAGE OPTION 2 - FLOOR PLAN	INDIANA	DATE JANUARY 2024 PROJECT NUMBER 2161-4766-90	SKETCH NUMBER 0.3

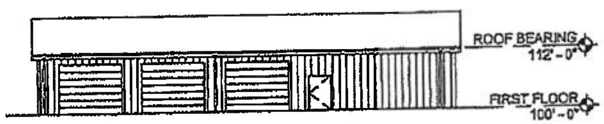
EXHIBIT B
Page 1 of 2



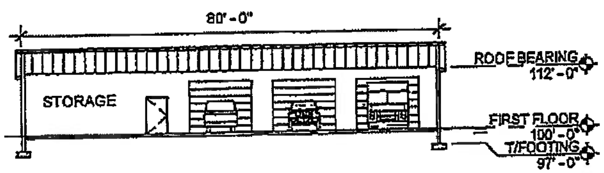
6 **SOUTH ELEVATION**
SCALE: 3/64" = 1'-0"



5 **E-W BUILDING SECTION**
SCALE: 3/64" = 1'-0"

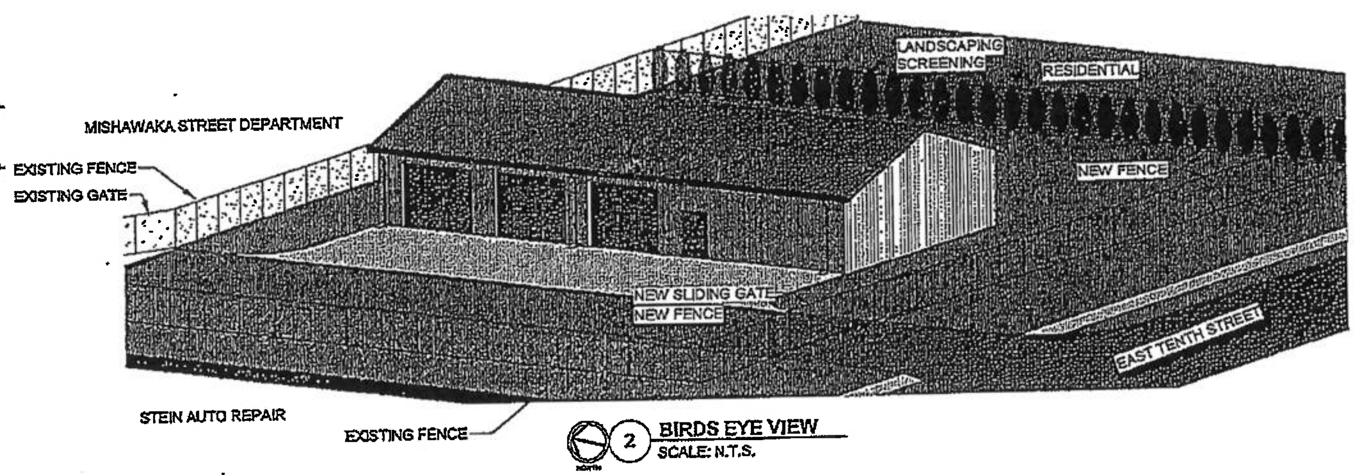


4 **EAST ELEVATION**
SCALE: 3/64" = 1'-0"

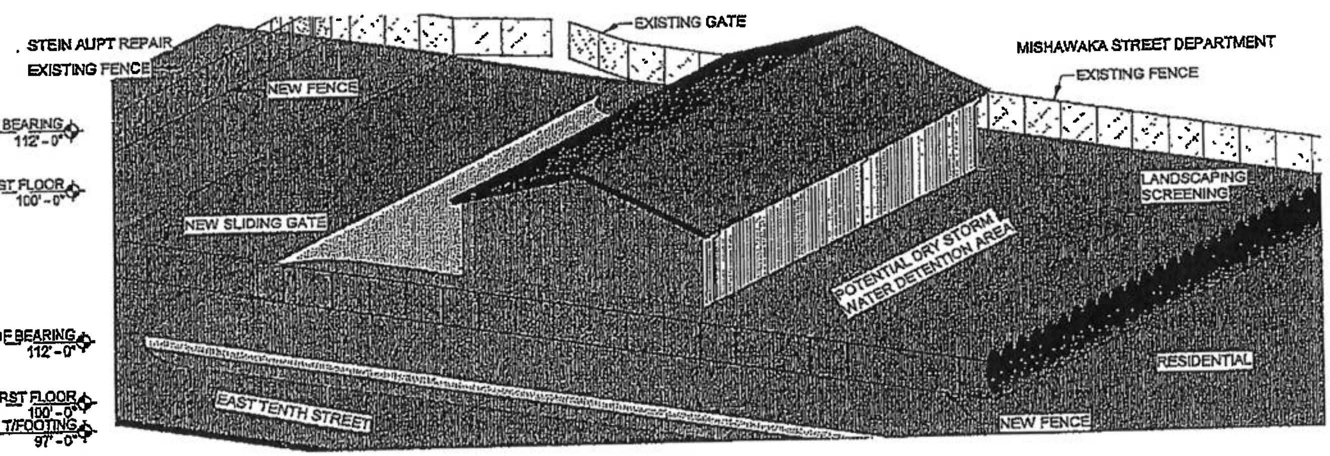


3 **N-S BUILDING SECTION**
SCALE: 3/64" = 1'-0"

SCALE: 3/64" = 1'-0"
0 32' - 0" 64' - 0" 128' - 0"



2 **BIRDS EYE VIEW**
SCALE: N.T.S.



1 **BIRDS EYE VIEW**
SCALE: N.T.S.

DLZ DLZ INDIANA, LLC	MISHAWAKA	MISHAWAKA-PENN-HARRIS PUBLIC LIBRARY CAPITAL IMPROVEMENTS - 2020 GENERAL OBLIGATION BOND NEW VEHICLE STORAGE OPTION 2 - BUILDING ELEVATIONS, BUILDING SECTIONS, AND BIRDS-EYE VIEW	INDIANA	DATE JANUARY 2024 PROJECT NUMBER 2161-4766-90	SKETCH NUMBER 0.4